

Amendments to the Drawings

Attached are drawing sheets for new Figures 3 and 4.

REMARKS

This Request for Continued Examination is filed to further address issues raised in the Final Rejection dated May 16, 2003. In subjecting the application to a final rejection, the Examiner repeated rejections A-U which were made in the final Office Action.

In response thereto, Applicant is presenting a Substitute Specification that provides much of the information requested by the Examiner. However, some of the information is not available and is believed not required under 35 USC 112, first and second paragraph when these two paragraphs are applied under 35 USC 161 to plant applications.

Prior to responding to the specific rejections, Applicant notes that in rejections A-c, F-O and R-U, the Examiner has used the language "failed to". This language implies that specific characteristics of peaches are required to be disclosed by either 35 USC 112, first and second paragraph, 37 CFR, the USPTO or MPEP. However, there are no such requirements. In this regard, 35 USC 162 clearly states:

"No plant patent shall be declared invalid for non-compliance with Section 112 of this title if the description is as complete as is reasonably possible."

It is submitted that the Substitute Specification provides as complete description of 'V75024' as is reasonably possible.

A. APPLICANT FAILED TO PROVIDE A COLOR DESCRIPTION FOR THE OBSERVED VARIETY WITH REFERENCE TO A RECOGNIZED COLOR CHART.

Applicant traverses this rejection on the grounds that reference to a recognized color chart, namely the Royal Horticultural Society Color Chart, is contained in the Substitute Specification. In this regard, the Examiner's attention is directed to items 2.4, 2.5, 5.3, 5.6, 6.11, 6.12 and 6.20 of Table 1.

B. SPECIFICATION FAILS TO SET FORTH AGE OF THE OBSERVED PLANT.

The age of the observed plant is set forth on page 6 of the Substitute Specification so this rejection is no longer applicable.

C. APPLICANT FAILS TO BE MORE DESCRIPTIVE WITH COMPARISON BETWEEN THE PARENTS 'SUNCLING' AND 'NEW JERSEY CLING 81' AND THE OBSERVED PLANT 'V75024'.

Applicant traverses this rejection on the ground that it has no basis in law or fact. Applicant has already disclosed that 'Babygold 5' is the variety that it most closely resembles (paragraph 3). In addition, the characteristics of 'V75024' have also been compared to the characteristics of 'Babygold 7' and 'Catherina', two other varieties that it closely resembles. There is no evidence of record that either 'Suncling' or 'New Jersey Cling', the parents of 'V85024' more closely resemble 'V75024' than does 'Babygold 5', 'Babygold 7' or 'Catherina'. Nor are there any guidelines cited by the Examiner that require such a comparison.

D. ADDITIONAL INFORMATION SHOULD BE IMPORTED INTO THE SPECIFICATION RELATIVE TO HEIGHT AND SPREAD FOR THE OBSERVED TREE AT A SPECIFIED AGE AND LOCATION, AND/OR AMOUNT OF GROWTH OVER A SPECIFIC PERIOD OF TIME.

This rejection is traversed because sections 2.1-2.3 of Table 1 describes the tree type, vigor and habit of the claimed variety 'V75024' and the referenced variation. Specifically, the issue of height and vigor is addressed in 2.2 and spread is addressed in 2.3. The vigor in terms of height and width crown for 'V75024' is 5 on a 1 to 9 scale.

E. INFORMATION SHOULD BE IMPORTED INTO THE SPECIFICATION RELATIVE TO PLANT VIGOR SO AS TO MORE MEANINGFULLY DESCRIBE.

Plant vigor in terms of height and width, is addressed in Section 2.2 of Table 1 of the Substitute Specification. There is no rule or guideline that requires that vigor be expressed in specific terms.

F. APPLICANT FAILED TO SET FORTH IN THE SPECIFICATION THE TRUNK DIAMETER.

Information not available.

G. APPLICANT FAILED TO SET FORTH A MORE DETAILED BOTANICAL DESCRIPTION RELATIVE TO BRANCH SIZE (DIAMETER), COLOR AND INTERNODE LENGTH.

Applicant traverses this rejection on the grounds that Applicant has not disclosed that branch size, color and internode length are distinguishing characteristics of the claimed variety and the Examiner has not presented any law, CFR rule or MPEP practice that requires such disclosure.

H. APPLICANT FAILED TO DISCLOSE INFORMATION REGARDING THE AMOUNT (AVERAGE PER SQUARE INCH), SIZE AND COLOR OF THE LENTICELS.

Applicant traverses this rejection on the grounds that lenticel characteristics are not characteristics that distinguish the claimed variety from the closest reference variety. Furthermore, the Examiner has not set forth reasons why absence of description lenticel information would not allow one skilled in the art to recognize the claimed variety.

I. APPLICANT FAILED TO DISCLOSE INFORMATION REGARDING THE SHAPE OF THE APEX AND BASE, SHAPE, MARGIN, TEXTURE, COLOR (BOTH SURFACES) VENATION PATTERN, VEIN COLOR AND LEAF ARRANGEMENT OF THE OBSERVED LEAF.

This rejection is deemed no longer applicable because the Substitute Specification, in Table 1, items 3.1-3.14, provides "LEAF BLADE CHARACTERISTICS". These characteristics include leaf blade size (3.1), leaf blade length (3.2), leaf blade width (3.3), leaf blade profile (3.4), leaf blade tip (3.5), angle at base (3.6), angle at tip (3.7), anthocyanin coloration (3.8) and serration (3.9).

J. APPLICANT FAILED TO DISCLOSE THE LENGTH, DIAMETER AND COLOR OF THE PETIOLE. THE RECITATION "MEDIUM-LONG, LONGER THAN THE COMPARATIVE VARIETIES" IS VAGUE AND INSUFFICIENT IN THIS REGARD.

This rejection is deemed no longer applicable because the Substitute Specification, Table 1, items 3.10-3.13, provides petiole characteristics. These characteristics include length (3.10), presence or absence of nectaries (3.12) and the number of nectaries (3.13). The reference varieties are known by plant breeders skilled in the art of breeding peaches. Since the relative values are disclosed, one skilled in the art can determine the length of petioles and number of nectaries.

K. APPLICANT FAILED TO DISCLOSE THE SHAPE, DIAMETER, LENGTH AND COLOR OF THE FLOWER BUD OF THE OBSERVED PLANT.

This rejection is deemed no longer applicable because the Substitute Specification, Table 1, items 4.1-4.4, provides "FLOWERING SHOOT CHARACTERISTICS". These include anthocyanin coloration observed in mid-summer (4.1), intensity of anthocyanin coloration observed in mid-summer (4.2), density of flower buds (observed in dormant period) (4.3) and flowering shoot distribution of flower buds observed in dormant period (4.4). While these characteristics are not the same as requested by the Examiner, they are sufficient to compare the claimed variety with the reference varieties. Again it is noted that there is nothing in 35 USC 112, 35 USC 161, 37 CFR rules or the MPEP that specific characteristics be utilized to identify and differentiate peach varieties.

L. APPLICANT FAILED TO SET FORTH IN THE SPECIFICATION THE AMOUNT, SIZE AND COLOR OF THE SEPALS.

This rejection is traversed on the grounds that a description of the sepals is not necessary to identify the claimed variety or distinguish or differentiate it from the referenced varieties.

M. APPLICANT FAILED TO SET FORTH IN THE SPECIFICATION THE FLOWER DIAMETER AS WELL AS THE SIZE (LENGTH AND WIDTH), SHAPE, MARGIN, COLOR (BOTH SURFACES), TEXTURE, SHAPE OF THE APEX AND BASE OF OBSERVED FLOWER PETAL. THE TERMS THE APPLICANT HAS DISCLOSED IN THE SPECIFICATION, I.E. "MEDIUM", "BURGUNDY", "ELONGATED", AND "MEDIUM PINK" ARE VAGUE AND INSUFFICIENT IN DESCRIBING THE FLOWER AND PETALS.

This rejection is traversed on the grounds that the Substitute Specification, Table 1, items 5.0 to 5.8, provides "FLOWER CHARACTERISTICS". These characteristics include time of beginning of flowering (5.1), flower shape (5.2), calyx color (5.3), petal shape (5.4), petal size (5.5), petal color (5.6), petal striping (5.7) and petal number (5.8). It is submitted that these characteristics would both allow one skilled in the art to identify the flower of the claimed variety and differentiate it from the referenced varieties.

N. APPLICANTS FAILED TO SET FORTH AN APPROXIMATE DATE OF BUD BURST AND BLOOM TIME IN THE SPECIFIED LOCATION OF CULTURE.

Item 5.1 of Table 1 discloses that the time of beginning of flowering for claimed variety and the reference variety is medium to late. One skilled in the art of breeding peaches understands the difference between the various time of the growing season and can determine what is meant by "medium to late".

O. APPLICANT FAILED TO SET FORTH IN THE SPECIFICATION THE REPRODUCTIVE ORGANS AND DESCRIBE THESE STRUCTURES (COLORS, SIZES, AMOUNT) IN THE INTEREST OF PROVIDING AS COMPLETE A BOTANICAL DESCRIPTION OF THE OBSERVED PLANT AS IS REASONABLY POSSIBLE. THE TERM THE APPLICANT HAS DISCLOSED IN THE SPECIFICATION, I.E. "IS ABOVE" (IN DESCRIBING THE POSITION OF THE SIGMA) IS VAGUE AND INSUFFICIENT IN DESCRIBING THE REPRODUCTIVE ORGANS.

Applicant traverses this rejection on the ground that a description of the reproductive organs of the claimed variety is provided in Table 1, items 5.10 to 5.13. This description includes stamens length compared to petals (5.9), number of pistils (5.10), stigma position compared to anthers (5.11), anthers: pollen (5.12) and pubescence in ovary (5.13). With respect to the Examiner's statement that the specification is vague in describing the location of the stigma relative to the anther, page 437 from Webster's New Collegiate Dictionary (1981) is enclosed to clarify what is intended. This page

shows the diagram of a flower. In this diagram the stigma 1 is above the anther, the same as in the case of 'V75024'. The stigma can be even with the anther or below it. Therefore, the description of the stigma as being above the anther does not need correction.

P. THE TERMS AND COLORS USED IN DESCRIBING THE OBSERVED FRUIT SHOULD BE IN QUANTITATIVE MEASUREMENT AND REFERENCED WITH AN EMPLOYED COLOR CHART.

Fruit characteristics of 'V75024' are described in item 6.0 to 6.27 of Table 1. These characteristics include time of maturity (6.1), type of picking season (6.2), size (6.4), shape (6.5), ground color of skin (6.11), anthocyanin coloration of skin (6.12) and ground color of flesh (6.20). Colors are referenced to the RHS color chart.

Q. THE OBSERVED FRUIT WEIGHT SHOULD BE DISCLOSED IN THE SPECIFICATION.

This characteristic has not been observed.

R. APPLICANT FAILED TO DISCLOSE INFORMATION REGARDING THE STONE AND KERNEL WITH REGARD TO THE SIZE (LENGTH, DIAMETER), COLOR, TEXTURE AND SHAPE.

Applicant traverses this rejection on the grounds that the Substitute Specification, Table 1, items 7.1 to 7.6, provide "STONE CHARACTERISTICS" of 'V75024'. Included characteristics are stone size compared to fruit (7.1), shape (7.2), color (7.3), percentage of split or shattered stones (7.4), adherence to flesh (7.5) and degree of adherence to stone (7.6). With respect to color and shape of the stone, these characteristics are also shown in Fig. 2 of the drawings.

S. APPLICANT FAILED TO DISCLOSE KNOWN SHIPPING AND STORAGE CHARACTERISTICS OF THE OBSERVED VARIETY, FOR EXAMPLE, THE NUMBER OF DAYS THAT THE FRUIT HAS BEEN STORED UNDER SPECIFIC CONDITIONS.

Fruit has not been shipped or stored under specific conditions. It must be kept in mind that 'V75024' is for processing. Typically, processing peaches are picked hard and

sent to the processing plant and canned within a week to 10 days at the maximum. Hence shipping long distance is not a factor for 'V75024'.

T. APPLICANT FAILED TO SET FORTH THE OBSERVED DATES OF FIRST AND LAST PICK IN THE SPECIFIC LOCATION OF CULTURE.

Specific dates have not been recorded, but the information provided in Table 1, item 6.1 provides picking season characteristics.

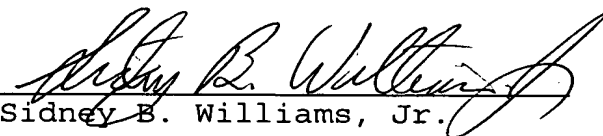
U. APPLICANT FAILED TO DISCLOSE INFORMATION TO THE OBSERVED PLANT'S WINTER HARDINESS AND DROUGHT/HEAT TOLERANCE.

This rejection is no longer applicable because the Substitute Specification, Table 1, item 9.0, indicates that 'V75024' reaction to winter cold during the dormant period is between medium hardy and hardy.

In addition to the description of 'V75024' and its comparison to reference varieties 'Babygold 5', 'Babygold 7' and 'Catherina'; provided in terms of visual observation, DNA finger printing of them is described in the Substitute Specification beginning on page 24, Table 3. Page 28 of the Substitute Specification shows fragment sizes (bp) detected for 'V75024', 'Babygold 5', 'Babygold 7' and 'Catherina'. Different fragment sizes for 'V75024' are detected in the Pchcms2 marker and the UDP96-013 marker. The different fragment sizes are in bold type.

In view of the Substitute Specification and arguments set forth above, withdrawal of the rejection and expeditious passage of this application to issue is respectfully solicited.

Respectfully submitted,


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SBW/cc